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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,257	03/24/2004	John M. Svendsen	17771-301294	4163

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FAEGRE & BENSON LLP  
PATENT DOCKETING  
2200 WELLS FARGO CENTER  
MINNEAPOLIS, MN 55402

EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/808,257	SVENDSEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David J. Walczak	3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/12/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election***

Applicant's election without traverse of Group I in the reply filed on 3/28/06 is acknowledged. Claims 1-16 will be examined herein and claims 17-21 are hereby withdrawn from further consideration.

### ***Drawings***

The drawings are objected to because line VI-VI is not present in Figure 3, as indicated in paragraph 0008. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: In paragraph 0010, "XIII" should be --VIII--, in paragraph 0029 "XVII-XVII" should be --XXVII-XXVII--, in paragraph 0030, "XVIII-XVIII" should be --XXVIII-XXVIII-- and in paragraph 0035, "XXX" should be --XXXIII--. Appropriate correction is required.

### ***Claim Objections***

Claims 1, 7, 8 and 16 are objected to because of the following informalities: In regard to claim 1, the preamble therein is not clearly worded, i.e., it appears that on line 2, "wherein at least" should be deleted, on line 3, "some of the flat, elongated members and" should be deleted and on line 4, "in the gap are" should be deleted. Further in regard to claim 1, in paragraph a, it appears that "coating delivery channel" should be --fluid passageway-- since the specification discloses that the pad includes fluid passageways 114 and it is the plate 20 that has the delivery channel. In regard to claims 7 and 8, on line 1 of these claims, it appears that "recess" should be --aperture-- since the specification discloses that the pad includes aperture 116 and it is the plate that includes the recess 44. In regard to claim 16, on line 1, it appears that "1.25 inches" should be inserted after "about" (see page 6, line 8). Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 7-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Grey. In regard to claim 1, Grey discloses an apparatus comprised of a generally flat coating applicator pad (made up of shorter bristles 27) having at least one delivery channel (33 and the space between the bristle groups) for delivering fluid to the planar surface of the pad and a plurality of bristles 27a extending out of the planar surface of the pad. It is noted that the statements of intended use, i.e., “for applying coating materials to a deck” do not lend any patentable structure to the claims. Further, the Grey device is capable of being used as claimed should a user so choose to employ the device. In regard to claim 2, the bristles are inherently flexible. In regard to claims 7 and 8, the gaps between the bristle groups 27 define recesses on “both” sides of the bristles (see Figure 8) which would inherently receive the bristles 27a (at least to some degree) when the bristles 27a are bent during use. In regard to claim 9, the device includes a coating delivery channel 33 for providing material to the bristles. In regard to claims 10-14, two adjacent bristles groups 27a comprise bristles that are angled as claimed, i.e. “about 67.5 degrees” (at the top thereof, see Figure 3) and are spaced as claimed, i.e. “about .08 inches”. In regard to claims 15 and 16, the apparatus includes a

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base plate 26 attached to the pad and a handle 20 pivotally attached to the base plate wherein the bristles 27a are spaced from the axis of the handle.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grey. Although the Grey reference does not disclose the material used to make the bristles, the Examiner takes official notice that the claimed materials are commonly used to make brush bristles (depending on the intended use of the brush). Accordingly, it is the Examiner's position that the bristles can be made from any suitable material, including the claimed material, without effecting the overall operation of the device.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Borofsky, Amundson, Jackson and Hartman references are cited for disclosing other pads having protruding bristles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
5/16/06